In the High Court of Judicature at Madras

Dated: 09.12.2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.O.P.No.37527 of 2004
and
Crl.M.P.No.11805 of 2004

S.Vijaya ... Petitioner

v

1. The Commissioner of Police,
   Greater Chennai
   Chennai 600 008

2. The Assistant Commissioner
   Adyar Range,
   Chennai-600 020

3. The Inspector of Police,
   Velacherry Police Station,
   Chennai.

4. Mary Philomina ... Respondents

Prayer: Petition filed under Section 482 Cr.P.C. praying for as stated above.

For petitioner : Mr.M.V.Muralidaran
For respondents 1 to 3 : Mr.A.N.Thamithurai Government Advocate Crl.Side
For 4th respondents : Mr.C.Prasanna venkatesh

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O R D E R

The petitioner has filed the above criminal original petition praying with this Court to direct the respondents 1 to 3 not to interfere with the petitioner's day to life in the property at Plot No.6,Baby Nagar 1st Main Road, Velachery Chennai-600 042 except due process of law.

2. During arguments, learned counsel for the petitioner would submit that the land situate at No.6, Baby Nagar, I Main Road, Velacherry, Chennai 42 which was originally acquired by the Government under the Tamil Nadu Urban Land Ceiling Act; that the petitioner's husband T.R.Sahadevan and her brother S.Murugan, approached the Tahsildar-Mambalam Guindy Taluk and they obtained enjoyment certificate in Na.Ka.A/830/96 dated 18.12.1996 and they became the absolute owners of the land in question; that the Village Administrative Officer, 137, Velacherry Village also issued the certificate in October, 1997, thereby certifying that the petitioner is residing in the property along with her brother S.Murugan; while so, the fourth respondent herein interfered with her property holding that the land belonged to her; that the fourth respondent instigated the Tahsildar-Mambalam Guindy Taluk, to evict her from the property and hence, the petitioner filed a writ petition in W.P.No.438 of 2004 against the Tahsildar Mambalam Guindy Taluk and the fourth respondent and this Court by an order dated 13.01.2004 issued status quo as on that date and directed the officials to enquire into the same. The further case of the petitioner is that the petitioner along with her brother S.Murugan, filed a civil suit in O.S.No.2284 of 2004 and got an interim injunction in I.A.No.8492 of 2004 in the said suit; that the fourth respondent instigates the respondents 1 to 3 to interfere with the possession and enjoyment of the property and the respondents 1 to 3 threatens her that if the petitioner continues the construction, they would detain her under the Goondas Act and on such averments, he prays for the relief extracted above.

3. Per contra, learned counsel appearing on behalf of the fourth respondent would submit that the fourth respondent is the owner of the property which is a vacant land consisting of two grounds; the petitioner, after exhausting her remedy before the civil Court and also before this Court by way of writ petitions, has now come for the criminal proceedings; that she cannot prove that she is in possession of the property in question; that she is not in possession of the property, is the order of the Civil Court and that she has suppressed the said fact before this Court; that the petitioner is claiming the property as her own based on a certificate of enjoyment issued by the Tahsildar concerned; that the fourth respondent and the petitioner are not relatives; that the accommodation itself is land grabbing and nothing more; that the sale deed is in the name of the fourth respondent and on

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such other averments, he prays for the dismissal of the above criminal original petition.

4. From the above arguments of the learned counsel for both, it should be claimed on the part of the petitioner that the petitioner is in possession and enjoyment of the property which is a vacant site comprised of a small shed in an extent of 2 grounds and the petitioner based on such possession of the property would come forward to seek to the relief of restraining the respondents 1 to 3 from causing obstruction or interference to the petitioner's day today life in the property in Plot No.6, Baby Nagar, I Main Street, Velacherry which is the subject matter regarding the above criminal original petition.

5. On the part of the fourth respondent, learned counsel appearing on her behalf would come forward to say to the effect that she is the bona fide purchaser of the property and in possession of the same since 1981 onwards in her capacity as the owner and the petitioner without any *locus standi* or reason, time and again is making interference into the bona fide possession of the property; and on further reasons assigned coupled with the order passed by the Civil Court, it is only in favour of the fourth respondent and in such circumstances without any right or reason, the petitioner used to cause interference into the physical possession of the fourth respondent in the property and now he has come forward to obstruct the police by filing the above criminal original petition when the Civil Court's orders are in force,that the learned counsel for the fourth respondent would say that this criminal original petition and the prayer sought to be granted has no place in the legal parlance and hence would very strongly oppose the above criminal original petition.

6. Unless the civil rights of parties are determined, no such order as it is prayed for on the part of the petitioner could be granted.

7. *Prima facie,* the fourth respondent, causing production of such documents would prove to the effect that it is not only her property but also the Civil Court's orders are in her favour.

8. On the part of the petitioner, her counsel also causing production of a notice issued by the Assistant Commissioner, Urban Land Ceiling Act which is in the names of three persons including that of the petitioner, would say that he is in possession of the property and in these circumstances, the only point for consideration is whether it is desirable on the part of this Court to issue an order as it is sought for on the part of the petitioner restraining the respondents 1 to 3 from causing any interference into the petitioner's day today life and the property which is the subject matter.

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9. The prayer itself is ambiguous and no such blanket order could be passed and in such event such an order is passed, at the worst times, the police who are the guardians of law, may not be in a position to discharge their duties in the manner required in law and therefore directing the parties to get the relief in the civil forum particularly in view of the fact that already civil cases are pending before a civil forum and they are being contested by both the parties and in accordance with the orders passed by the civil Court, the respondents 1 to 3 are strictly to act upon and who ever is having the civil rights such of their rights would be protected by respondents 1 to 3 and it is not for to this Court to say as to who is in possession or who is entitled to the property and whose rights are there in existence and therefore, without ascertaining all these facts, this Court cannot blindly order to the prayers of the petition and hence the following Order:

In result,

(i) subject to the above observations, the above criminal original petition does not merit acceptance and becomes liable to be dismissed and is dismissed accordingly.

(ii)Consequently, connected Crl.M.P.No.11805 of 2004 is also dismissed.

kvsg

Sd/-
Asst. Registrar

/True copy/

Sub. Asst. Registrar

To

1. The Commissioner of Police
   Greater Chennai
   Chennai 600 008

2. The Assistant Commissioner
   Adyar Range,
   Chennai-600 020

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3. The Inspector of Police,
   Velacherry Police Station,
   Chennai.

4.The Registrar City Civil
  Court Chennai

5. The Public Prosecutor,
   High Court, Madras.

  +1 cc to MR.M.V.Muralidaran, Advocate SR 54323

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TEJ(CO)
SR

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